UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

IN THE MATTER OF:

Elgin Community College Respondent.

REQUEST PURSUANT TO SECTION 308 of the CLEAN WATER ACT (CWA), 33 U.S.C. § 1318(a)

DOCKET NO. V-404-308-12-DS1

INFORMATION REQUEST

The U.S. Environmental Protection Agency is requiring Elgin Community College ("you") to submit certain information regarding the alleged discharge of dredged or fill material into waters of the United States, located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the "Site") (Attachment1). In conjunction with the cease and desist order you received from the U.S. Army Corps of Engineers (Corps), Chicago District, dated June 7, 2012 (Attachment 2), it is alleged that you have impacted wetlands adjoining a tributary of Otter Creek and the Fox River, a navigable water of the United States (Attachment 3). Appendix A specifies the information you must submit relating to the Site. The EPA requests this information under the authority of Section 308 of the Clean Water Act ("CWA"), 33 U.S.C. § 1318, to determine whether you are in violation of the CWA.

Appendix B contains general instructions and definitions that you should use to provide the requested information. Under 40 C.F.R. Part 2, Subpart B you may assert a claim of business confidentiality for any portion of the submitted information. The general instructions in Appendix A include specific procedures for assertion of business confidentiality claims.

If you fail to comply with this request, we may take enforcement action against you under Section 309 of the CWA, 33 U.S.C. § 3319, which contains specified civil and criminal penalties. We have the authority to use the information you provide in response to this request in an administrative, civil, or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3518(c)(1)(B)(ii), because it seeks to collect information from specific individuals or entities as part of an administrative action or investigation.

You must send all of the requested information within thirty (30) calendar days to:

Mr. David W. Schulenberg Senior Enforcement Officer Watershed & Wetlands Branch U.S. EPA – Region 5 77 West Jackson Boulevard, WW-16J Chicago, Illinois 60604-3590

Mr. Keith L. Wozniak Chief, West Section Attn: Michael J. Machalek Regulatory Branch U.S. Army Corps of Engineers, Chicago District 111 West Canal Street Chicago, Illinois 60606-7206

Tinka G. Hyde
Director, Water Division

Tinka G. Hyde Director, Water Division U.S. EPA - Region 5 77 West Jackson Boulevard Chicago, Illinois 60604-3590

Unless otherwise specified, the period covered by these requests shall be from June 2009 to present.

- 1. Provide all land documents that reflect Elgin Community Colleges' (ECC) ownership interest in the Site or any portion thereof, including, but not limited to plats of survey, titles, deeds, easements, and property or real estate tax bills.
- 2. A cease and desist order (C & D) was issued to you on June 7, 2012 by the U.S. Army Corps of Engineers ("USACE")¹. The C & D states that ECC has discharged fill and/or dredged materials into a wetland, without obtaining a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 3344². Provide the following information with respect to the activities listed in the C & D at the Site:
 - a) Specific purpose(s) of or reason(s) for the activities;
 - b) Date the activities commenced;
 - c) Date the activities were completed;
 - d) Date any dredge or fill material was first deposited; and
 - e) Date any dredge or fill material was removed.
- 3. Provide all documents that authorized ECC to conduct the activities referenced in the C & D at the Site, including, but not limited to, correspondence, contracts, agreements, purchase orders, work orders, requests for quotes, quotes, memoranda, invoices, letter agreements, receipts, proposals, statements and any similar documents.
- 4. In addition to responses provided to No. 3, above, provide a copy of any contract between ECC, Wills Burke Kelsey Associates (WBK), Lamp, Inc., Schneider Excavation, and all other contractors, including subcontractors, for the development and construction of the Site. Your response shall include a dated and signed copy by the person authorized to execute the contracts for and on behalf of ECC and provide copies of any attachments/enclosure to those contracts.
- 5. Provide a copy of any "Notice-to-Proceed (NTP)" provided by ECC or ECC contractors authorizing construction to be initiated at the site. Your response shall include a dated and signed copy by the person authorized to execute these notices for or on behalf of ECC.
- 6. Beginning from the date when construction was initiated and completed, in response to No. 2, above, provide copies of any construction change orders submitted by contractors and subcontractors and approved/paid by ECC. Your response shall include a date and signature for each change order submitted and a date and signature for each change order approved by the person authorized to execute the change orders for and on behalf of ECC.

¹ See Attachment 2.

² See Attachment 1.

- 7. Provide copies of all documents and information you have which describe the Site's physical attributes and the Site's immediate surroundings, including, but not limited to:
 - a) Topographical (elevational) surveys, including any drawing(s) of vertical or horizontal elevations;
 - b) Soil borings or sample data;
 - c) Vegetation identifications, descriptions, or surveys;
 - d) Site hydrological surveys (e.g., data on ground water and surface water flows); and,
 - e) Any engineering or Site plans or maps, including any used for permitting.
- 8. Provide copies of all aerial and ground photos of the Site, which may include original film negatives, positives, digital photos, and/or marked-up aerial photos in your possession. Include a narrative for each photo submitted, providing the date the photo was taken and description of the area depicted in the photo (e.g., directional and orientation references).
- 9. Provide a detailed description of all earthmoving, construction, excavation, and vegetation-clearing activities that occurred in wetlands, streams, ditches, ponds, and lakes on the Site. Describe all earthmoving, construction, excavation, and vegetation-clearing activities, including, but not limited to, piping, decanting, spilling, trenching, culvert placement, road way construction, drag-lining, mechanized or manual clearing of vegetation, windrowing or stockpiling, grading, grubbing, soil excavation or removal, installation of dams or other water control features, and placing fill or dredged material. Include a timeline of the activities that occurred.
- 10. Provide a description of the type(s) of equipment and method(s) used to accomplish the activities referenced in Question 9, above.
- 11. Provide copies of any document(s) that describe the length and area of dredged or fill material placement that ECC added to, excavated from, or rearranged in wetlands, streams, ditches, ponds, and lakes on the Site. If you have no documents recording the length and area of dredge and fill placement, please provide a narrative response with an estimate of these figures.
- 12. Provide the name, title, employer, business address, and business telephone number of each person or company, including yourself, who was involved in any of the activities described in your answers to Questions 1-11, above.
- 13. Provide copies of all documentation (including, but not limited to, field notes, maps, photographs, video, aquatic resource assessments, and wetland delineations) of the efforts you made to determine whether the Site or any portion of it contained wetlands or other waters of the United States (e.g., streams, ditches, ponds, or lakes). Identify by name, title, employer, and business address, all persons involved in this determination.

- 14. State whether ECC has ever applied for or received a permit, including nationwide, regional, general, individual or after-the-fact permits, issued under Section 404 of the CWA, 33 U.S.C. § 1344, or had other prior knowledge of the CWA Section 404 Regulatory program. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence specifically mentioning the USACE or the CWA Section 404/402 program.
- 15. State whether Elgin Community College has applied for or received a permit issued by the State of Illinois or its political subdivisions or agencies, including the Illinois Environmental Protection Agency (IEPA), Kane County and the City of Elgin, related to work performed at the Site. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence related to processing any permit. Your response shall provide a dated and signed copy by the person authorized to submit these requests and provide copies of any attachments/enclosures accompanying the request/application.
- 16. Provide any correspondence between ECC and the City of Elgin regarding local requirements requiring that ECC prepare an update to its campus-wide stormwater management plan, as well as an operations and maintenance plan for the private stormwater management system and outfalls within the campus limits. Your response should include the reasons why the City has requested that these plans be prepared before any additional campus projects are permitted and the current status and schedule for completing these plans.
- 17. Identify the date(s) and provide copies of any recommendations placed before the ECC Board of Trustees for approval of funding, contracts, and change orders for the development and construction on the Site.
- 18. As ECC was instructed by the Corps on June 7, 2012 (enclosed), provide the following information³:
 - A. If your decision is to restore the affected area(s), you shall submit written acknowledgement of your decision, along with a restoration plan and schedule within 30 days of receipt of this order. Please be informed that any proposed restoration work shall not commence until this office has approved the restoration plan. The restoration plan and schedule must include:
 - i. Appropriate figures with landmarks and dimensions detailing the proposed restoration efforts;
 - ii. Activities to be undertaken in your restoration efforts. You must provide written information in narrative format on how the fill would be removed and erosion and sediment control measures to be installed prior to fill removal;
 - iii. A schedule of implementation, with start and end dates for all restoration activities;

³ To date, the ECC has not complied with the Corps' request.

- iv. The area shall be replanted with native vegetation only. You shall provide Information on the species/quantities to be replanted and;
 - v. Information on the permanent disposal location of the removed fill material.
 - B. If your decision is to leave the dredged and/or fill material in place, the following information shall be submitted to this office, in writing, so that a determination of whether to accept or deny your After-the-Fact permit application can be completed:
 - i. Purpose of the project along with a clear description of work;
 - ii. Construction drawings (full-sized) showing all aspects of the proposed activity, including existing and proposed contours, utilities, the location of waters of the United States to be impacted and not impacted, and the Ordinary High Water Mark (OHWM) and/or the Normal Water Level (NWL) of all waterways, including wetlands. In addition, the drawings shall include detail plan and profile views of all regulated structures:
 - iii. The direct and indirect adverse environmental effects that the project would cause:
 - iv. A delineation of affected special aquatic sites, including wetlands that existed on the property prior to construction activities, with an overlay of the filled area;
 - v. A statement indicating the present owner of this property;
 - vi. A statement indicating the type of fill and its source, the date(s) of filling, and the identity of the individual(s) performing the work;
 - vii. A list of all permits or authorizations received for this activity, including name of agency, date of permit and description of permitted activity;
 - viii. A statement indicating why you failed to obtain an Army Corps of Engineers permit prior to the discharge, and;
 - ix. Your signature on the enclosed Tolling Agreement.
- 19. Provide any other information or documents you deem relevant to this matter.

- 20. You or a responsible agent must submit all requested information under an authorized signature with the following certification:
- "I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

APPENDIX B: Instructions and Definitions

Unless otherwise specified, the following general instructions and definitions apply when providing the information requested in Appendix A.

General Instructions

- 1. Provide a separate narrative response to each question and subpart of a question set forth in the Information Request.
- 2. Each response shall identify the number of the question, and if relevant, any subpart to which a response is being provided.
- 3. Label each document submitted in response to this Information Request with the request number and subpart (if applicable) to which it corresponds. If anything is deleted or redacted from a document produced in response to this Information Request, state the reason for and the subject matter of the deleted or redacted information.
- 4. If a document you submit is responsive to more than one request, please provide one copy of the document and identify all the requests, by number and subpart, to which it corresponds.
- 5. For each response, organize the requested information or documents chronologically.
- 6. When documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such information.
- 7. If any documents or information responsive to a request are not known or are not available to you at the time you submitted your response, but later become known or available to you, you should submit the new information as a supplement to your response. If at any time after submission of your response you learn that any portion is or becomes false, incomplete, or misrepresents the facts, you should notify the EPA of this fact as soon as possible and provide a corrected response. If any part of the response to this Information Request is found to be false, the signatory to the response and the company may be subject to criminal prosecution.
- 8. If you claim that an entire document responsive to this Information Request is withheld on the basis of a privilege, identify the document and provide the basis for asserting any privilege. For any portion of a document that you claim is withheld on the basis of a privilege, provide the portion of the document for which you are not asserting any privilege; identify the portion of the document for which you are asserting any privilege; and provide the basis for such an assertion.

9. You should provide responsive documents or information even though you consider it confidential information or trade secrets. You may assert a business confidentiality claim for part or all of the information requested, as set forth in 40 C.F.R. Part 2, Subpart B. Information covered by such a claim will be disclosed by the EPA only to the extent and only by the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when the EPA receives it, the information may be made available to the public by the EPA without further notice to you.

If you would like the EPA to treat any information, document, or response as "confidential," you must advise the EPA by placing on or attaching a cover sheet to any document or prefacing any response such language as "trade secret," "proprietary," or "confidential business information." You must clearly identify allegedly confidential portions of otherwise non-confidential documents, and you may want to submit these separately to facilitate identification and handling by the EPA. Pursuant to 40 C.F.R. Part 2, Subpart B, the EPA may at any time send you a letter asking you to substantiate your confidentiality claim.

General Definitions

All terms used in this Information Request shall have their ordinary meaning unless such terms are defined in the Clean Water Act, 33 U.S.C. §§ 1251-1387, or the Clean Water Act's implementing regulations. The following specific definitions shall apply to the Information Request:

- 1. "Or" shall mean and/or.
- 2. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun used, and vice versa; and in a similar fashion, the use of the masculine form of a pronoun shall be construed to also include within its meaning the feminine form of the pronoun, and vice versa; and in a similar fashion, the use of any tense of a verb shall be construed to also include within its meaning all other tenses of the verb so used.
- 3. "Document" is used in its broadest sense and shall mean and refer to all written or graphic matter of every kind and description however produced or reproduced, whether draft or final, original or reproduction.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

IN THE MATTER OF:

Elgin Community College Respondent.

REQUEST PURSUANT TO SECTION 308 of the CLEAN WATER ACT (CWA), 33 U.S.C. § 1318(a)

DOCKET NO. V-404-308-12-DS1

INFORMATION REQUEST

The U.S. Environmental Protection Agency is requiring Elgin Community College ("you") to submit certain information regarding the alleged discharge of dredged or fill material into waters of the United States, located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the "Site") (Attachment1). In conjunction with the cease and desist order you received from the U.S. Army Corps of Engineers (Corps), Chicago District, dated June 7, 2012 (Attachment 2), it is alleged that you have impacted wetlands adjoining a tributary of Otter Creek and the Fox River, a navigable water of the United States (Attachment 3). Appendix A specifies the information you must submit relating to the Site. The EPA requests this information under the authority of Section 308 of the Clean Water Act ("CWA"), 33 U.S.C. § 1318, to determine whether you are in violation of the CWA.

Appendix B contains general instructions and definitions that you should use to provide the requested information. Under 40 C.F.R. Part 2, Subpart B you may assert a claim of business confidentiality for any portion of the submitted information. The general instructions in Appendix A include specific procedures for assertion of business confidentiality claims.

If you fail to comply with this request, we may take enforcement action against you under Section 309 of the CWA, 33 U.S.C. § 3319, which contains specified civil and criminal penalties. We have the authority to use the information you provide in response to this request in an administrative, civil, or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3518(c)(1)(B)(ii), because it seeks to collect information from specific individuals or entities as part of an administrative action or investigation.

You must send all of the requested information within thirty (30) calendar days to:

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Tinka G. Hyde Director, Water Division U.S. EPA - Region 5 77 West Jackson Boulevard Chicago, Illinois 60604-3590 **Date**

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General Instructions

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- 2. Each response shall identify the number of the question, and if relevant, any subpart to which a response is being provided.
- 3. Label each document submitted in response to this Information Request with the request number and subpart (if applicable) to which it corresponds. If anything is deleted or redacted from a document produced in response to this Information Request, state the reason for and the subject matter of the deleted or redacted information.
- 4. If a document you submit is responsive to more than one request, please provide one copy of the document and identify all the requests, by number and subpart, to which it corresponds.
- 5. For each response, organize the requested information or documents chronologically.
- 6. When documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such information.
- 7. If any documents or information responsive to a request are not known or are not available to you at the time you submitted your response, but later become known or available to you, you should submit the new information as a supplement to your response. If at any time after submission of your response you learn that any portion is or becomes false, incomplete, or misrepresents the facts, you should notify the EPA of this fact as soon as possible and provide a corrected response. If any part of the response to this Information Request is found to be false, the signatory to the response and the company may be subject to criminal prosecution.
- 8. If you claim that an entire document responsive to this Information Request is withheld on the basis of a privilege, identify the document and provide the basis for asserting any privilege. For any portion of a document that you claim is withheld on the basis of a privilege, provide the portion of the document for which you are not asserting any privilege; identify the portion of the document for which you are asserting any privilege; and provide the basis for such an assertion.

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- 2. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun used, and vice versa; and in a similar fashion, the use of the masculine form of a pronoun shall be construed to also include within its meaning the feminine form of the pronoun, and vice versa; and in a similar fashion, the use of any tense of a verb shall be construed to also include within its meaning all other tenses of the verb so used.
- 3. "Document" is used in its broadest sense and shall mean and refer to all written or graphic matter of every kind and description however produced or reproduced, whether draft or final, original or reproduction.

APPENDIX B

Unless otherwise specified, the period covered by these requests shall be from [INSERT DATE] to [present or {INSERT DATE}].

- 1) Provide all land documents that reflect [Respondent's name] ("you" or "your") ownership interest in the Site or any portion thereof, including, but not limited to plats of survey, titles, deeds, easements, and property or real estate tax bills.
- [A Notice of Violation ("NOV") was issued to you on [DATE], by the [Name of District] District for the United States Army Corps of Engineers ("USACE"). The NOV states that you [describe activities listed in NOV]. We have information that you [describe factual basis of alleged violation(s)] at the Site without obtaining a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 3344. Provide the following information with respect to the [activities listed in the NOV] [description of factual basis of alleged violation(s)] at the Site:
 - a) Specific purpose(s) of or reason(s) for the activities;
 - b) Date the activities commenced;
 - c) Date the activities were completed;
 - d) Date any dredge or fill material was first deposited; and
 - e) Date any dredge or fill material was removed.
- Provide all documents that authorized you to conduct the [activities referenced in the NOV] [description of factual basis of alleged violation(s)] at the Site, including, but not limited to, correspondence, contracts, agreements, purchase orders, work orders, requests for quotes, quotes, memoranda, invoices, letter agreements, receipts, proposals, statements and any similar documents.
- 4) Provide copies of all documents and information you have which describe the Site's physical attributes and the Site's immediate surroundings, including, but not limited to:
 - a) Topographical (elevational) surveys, including any drawing(s) of vertical or horizontal elevations;
 - b) Soil borings or sample data;
 - c) Vegetation identifications, descriptions, or surveys;
 - d) Site hydrological surveys (e.g., data on ground water and surface water flows); and
 - e) Any engineering or Site plans or maps, including any used for permitting.
- Provide copies of all aerial and ground photos of the Site, which may include original film negatives, positives, digital photos, and/or marked-up aerial photos in your possession. Include a narrative for each photo submitted, providing the date the photo was taken and description of the area depicted in the photo (e.g., directional and orientation references).

- Provide a detailed description of all earthmoving, construction, excavation, and vegetation-clearing activities that occurred in wetlands, streams, ditches, ponds, and lakes on the Site. Describe all earthmoving, construction, excavation, and vegetation-clearing activities, including, but not limited to, piping, decanting, spilling, trenching, culvert placement, road way construction, drag-lining, mechanized or manual clearing of vegetation, windrowing or stockpiling, grading, grubbing, soil excavation or removal, installation of dams or other water control features, and placing fill or dredged material. Include a timeline of the activities that occurred.
- Provide a description of the type(s) of equipment and method(s) used to accomplish the activities referenced in Question ___, above.
- Provide copies of any document(s) that describe the length and area of dredged or fill material placement that you added to, excavated from, or rearranged in wetlands, streams, ditches, ponds, and lakes on the Site. If you have no documents recording the length and area of dredge and fill placement, please provide a narrative response with an estimate of these figures.
- 9) Provide the name, title, employer, business address, and business telephone number of each person or company, including yourself, who was involved in any of the activities described in your answers to Questions _____, above.
- 10) Provide copies of all documentation (including, but not limited to, field notes, maps, photographs, video, aquatic resource assessments, and wetland delineations) of the efforts you made to determine whether the Site or any portion of it contained wetlands or other waters of the United States (e.g., streams, ditches, ponds, or lakes). Identify by name, title, employer, and business address, all persons involved in this determination.
- 11) State whether you, individually or as part of a business, partnership, or corporation, have ever applied for or received a permit, including nationwide, regional, general, individual or after-the-fact permits, issued under Section 404 of the CWA, 33 U.S.C. § 1344, or had other prior knowledge of the CWA Section 404 Regulatory program. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence specifically mentioning the USACE or the CWA Section 404 program.
- State whether you, individually or as part of a business, partnership, or corporation, have applied for or received a permit issued by the State of [] or its political subdivisions or agencies, including the [insert appropriate agencies and/or political subdivisions], related to work performed at the Site. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence related to processing any permit.
- 13) Provide any other information or documents you deem relevant to this matter.

14) You or a responsible agent must submit all requested information under an authorized signature with the following certification:

I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WW-16J

<u>CERTIFIED MAIL</u> RETURN RECEIPT REQUESTED

Dr. David Sam, Ph.D. President, Elgin Community College 1700 Spartan Drive Elgin, Illinois 60123

Re: Request for Information under Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a)

Dear Dr. Sam:

The U.S. Environmental Protection Agency, Region 5 is issuing this request for information pursuant to the authority granted to it under Section 308(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1318(a), and the regulations promulgated thereunder.

The EPA is authorized under Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to require the owner or operator of any "point source," as defined in 33 U.S.C. § 1362(14), to provide certain information, establish records, and make such reports as necessary to carry out the objectives of the Act. The EPA submits the enclosed information request to you and Elgin Community College (ECC) to determine whether you are in compliance with the CWA.

If you have any questions regarding this Information Request, please contact Mr. David W. Schulenberg, Senior Enforcement Officer at (312) 886-6680. Any legal questions may be directed to Mr. Mark Palermo, Associate Regional Counsel at (312) 886-6082.

Sincerely,

Tinka G. Hyde Director, Water Division

Enclosure

cc: Keith Wozniak/Mike Machalek, ACOE, Chicago District (w/enclosure)

Unless otherwise specified, the period covered by these requests shall be from June 2009 to present.

- 1. Provide all land documents that reflect Elgin Community Colleges' (ECC) ownership interest in the Site or any portion thereof, including, but not limited to plats of survey, titles, deeds, easements, and property or real estate tax bills.
- 2. A cease and desist order (C & D) was issued to you on June 7, 2012 by the U.S. Army Corps of Engineers ("USACE")¹. The C & D states that ECC has discharged fill and/or dredged materials into a wetland, without obtaining a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 3344². Provide the following information with respect to the activities listed in the C & D at the Site:
 - a) Specific purpose(s) of or reason(s) for the activities;
 - b) Date the activities commenced;
 - c) Date the activities were completed;
 - d) Date any dredge or fill material was first deposited; and
 - e) Date any dredge or fill material was removed.
- 3. Provide all documents that authorized ECC to conduct the activities referenced in the C & D at the Site, including, but not limited to, correspondence, contracts, agreements, purchase orders, work orders, requests for quotes, quotes, memoranda, invoices, letter agreements, receipts, proposals, statements and any similar documents.
- 4. In addition to responses provided to No. 3, above, provide a copy of any contract between ECC, Wills Burke Kelsey Associates (WBK), Lamp, Inc., Schneider Excavation, and all other contractors, including subcontractors, for the development and construction of the Site. Your response shall include a dated and signed copy by the person authorized to execute the contracts for and on behalf of ECC and provide copies of any attachments/enclosure to those contracts.
- 5. Provide a copy of any "Notice-to-Proceed (NTP)" provided by ECC or ECC contractors authorizing construction to be initiated at the site. Your response shall include a dated and signed copy by the person authorized to execute these notices for or on behalf of ECC.
- 6. Beginning from the date when construction was initiated and completed, in response to No. 2, above, provide copies of any construction change orders submitted by contractors and subcontractors and approved/paid by ECC. Your response shall include a date and signature for each change order submitted and a date and signature for each change order approved by the person authorized to execute the change orders for and on behalf of ECC.
- 7. Provide copies of all documents and information you have which describe the Site's

² See Attachment 1.

¹ See Attachment 2.

physical attributes and the Site's immediate surroundings, including, but not limited to:

- a) Topographical (elevational) surveys, including any drawing(s) of vertical or horizontal elevations;
- b) Soil borings or sample data;
- c) Vegetation identifications, descriptions, or surveys;
- d) Site hydrological surveys (e.g., data on ground water and surface water flows); and.
- e) Any engineering or Site plans or maps, including any used for permitting.
- 8. Provide copies of all aerial and ground photos of the Site, which may include original film negatives, positives, digital photos, and/or marked-up aerial photos in your possession. Include a narrative for each photo submitted, providing the date the photo was taken and description of the area depicted in the photo (e.g., directional and orientation references).
- 9. Provide a detailed description of all earthmoving, construction, excavation, and vegetation-clearing activities that occurred in wetlands, streams, ditches, ponds, and lakes on the Site. Describe all earthmoving, construction, excavation, and vegetation-clearing activities, including, but not limited to, piping, decanting, spilling, trenching, culvert placement, road way construction, drag-lining, mechanized or manual clearing of vegetation, windrowing or stockpiling, grading, grubbing, soil excavation or removal, installation of dams or other water control features, and placing fill or dredged material. Include a timeline of the activities that occurred.
- 10. Provide a description of the type(s) of equipment and method(s) used to accomplish the activities referenced in Question 9, above.
- 11. Provide copies of any document(s) that describe the length and area of dredged or fill material placement that ECC added to, excavated from, or rearranged in wetlands, streams, ditches, ponds, and lakes on the Site. If you have no documents recording the length and area of dredge and fill placement, please provide a narrative response with an estimate of these figures.
- 12. Provide the name, title, employer, business address, and business telephone number of each person or company, including yourself, who was involved in any of the activities described in your answers to Questions 1-11, above.
- 13. Provide copies of all documentation (including, but not limited to, field notes, maps, photographs, video, aquatic resource assessments, and wetland delineations) of the efforts you made to determine whether the Site or any portion of it contained wetlands or other waters of the United States (e.g., streams, ditches, ponds, or lakes). Identify by name, title, employer, and business address, all persons involved in this determination.
- 14. State whether ECC has ever applied for or received a permit, including nationwide, regional, general, individual or after-the-fact permits, issued under Section 404 of the CWA, 33 U.S.C. § 1344, or had other prior knowledge of the CWA Section 404 Regulatory program. Provide copies of all relevant documents including, but not limited to, permits, permit application

materials, and correspondence specifically mentioning the USACE or the CWA Section 404/402 program.

- 15. State whether Elgin Community College has applied for or received a permit issued by the State of Illinois or its political subdivisions or agencies, including the Illinois Environmental Protection Agency (IEPA), Kane County and the City of Elgin, related to work performed at the Site. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence related to processing any permit. Your response shall provide a dated and signed copy by the person authorized to submit these requests and provide copies of any attachments/enclosures accompanying the request/application.
- 16. Provide any correspondence between ECC and the City of Elgin regarding local requirements requiring that ECC prepare an update to its campus-wide stormwater management plan, as well as an operations and maintenance plan for the private stormwater management system and outfalls within the campus limits. Your response should include the reasons why the City has requested that these plans be prepared before any additional campus projects are permitted and the current status and schedule for completing these plans.
- 17. Identify the date(s) and provide copies of any recommendations placed before the ECC Board of Trustees for approval of funding, contracts, and change orders for the development and construction on the Site.
- 18. As ECC was instructed by the Corps on June 7, 2012 (enclosed), provide the following information³:
 - A. If your decision is to restore the affected area(s), you shall submit written acknowledgement of your decision, along with a restoration plan and schedule within 30 days of receipt of this order. Please be informed that any proposed restoration work shall not commence until this office has approved the restoration plan. The restoration plan and schedule must include:
 - i. Appropriate figures with landmarks and dimensions detailing the proposed restoration efforts;
 - ii. Activities to be undertaken in your restoration efforts. You must provide written information in narrative format on how the fill would be removed and erosion and sediment control measures to be installed prior to fill removal;
 - iii. A schedule of implementation, with start and end dates for all restoration activities;
 - iv. The area shall be replanted with native vegetation only. You shall provide Information on the species/quantities to be replanted and;
 - v. Information on the permanent disposal location of the removed fill material.

³ To date, the ECC has not complied with the Corps' request.

- B. If your decision is to leave the dredged and/or fill material in place, the following information shall be submitted to this office, in writing, so that a determination of whether to accept or deny your After-the-Fact permit application can be completed:
 - i. Purpose of the project along with a clear description of work;
- ii. Construction drawings (full-sized) showing all aspects of the proposed activity, including existing and proposed contours, utilities, the location of waters of the United States to be impacted and not impacted, and the Ordinary High Water Mark (OHWM) and/or the Normal Water Level (NWL) of all waterways, including wetlands. In addition, the drawings shall include detail plan and profile views of all regulated structures;
- iii. The direct and indirect adverse environmental effects that the project would cause;
- iv. A delineation of affected special aquatic sites, including wetlands that existed on the property prior to construction activities, with an overlay of the filled area;
 - v. A statement indicating the present owner of this property;
- vi. A statement indicating the type of fill and its source, the date(s) of filling, and the identity of the individual(s) performing the work;
- vii. A list of all permits or authorizations received for this activity, including name of agency, date of permit and description of permitted activity;
- viii. A statement indicating why you failed to obtain an Army Corps of Engineers permit prior to the discharge, and;
 - ix. Your signature on the enclosed Tolling Agreement.
- 19. Provide any other information or documents you deem relevant to this matter.
- 20. You or a responsible agent must submit all requested information under an authorized signature with the following certification:
- "I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

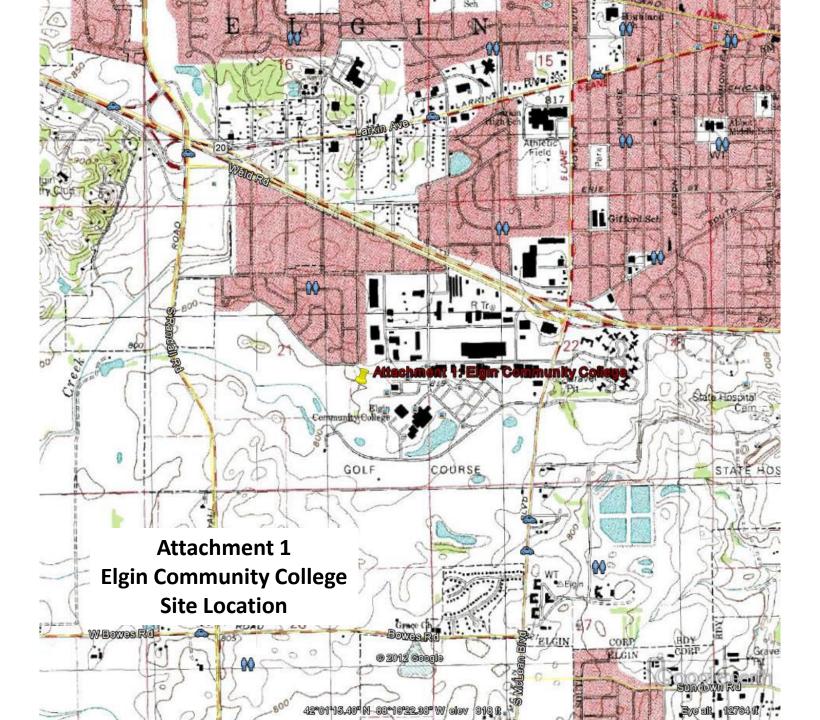
Unless otherwise specified, the period covered by these requests shall be from June 2009 to present.

- 1) Provide all land documents that reflect Elgin Community Colleges' ownership interest in the Site or any portion thereof, including, but not limited to plats of survey, titles, deeds, easements, and property or real estate tax bills.
- A cease and desist order (C & D) was issued to you on June 7, 2012 by the Chicago District, U.S. Army Corps of Engineers ("USACE"). The C & D states that Elgin Community College has discharged fill and/or dredged materials into a wetland (see Attachment 1), without obtaining a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 3344. Provide the following information with respect to the activities listed in the C & D at the Site:
 - a) Specific purpose(s) of or reason(s) for the activities;
 - b) Date the activities commenced;
 - c) Date the activities were completed;
 - d) Date any dredge or fill material was first deposited; and
 - e) Date any dredge or fill material was removed.
- Provide all documents that authorized you to conduct the activities referenced in the C & D at the Site, including, but not limited to, correspondence, contracts, agreements, purchase orders, work orders, requests for quotes, quotes, memoranda, invoices, letter agreements, receipts, proposals, statements and any similar documents.
- 4) Provide copies of all documents and information you have which describe the Site's physical attributes and the Site's immediate surroundings, including, but not limited to:
 - a) Topographical (elevational) surveys, including any drawing(s) of vertical or horizontal elevations;
 - b) Soil borings or sample data;
 - c) Vegetation identifications, descriptions, or surveys;
 - d) Site hydrological surveys (e.g., data on ground water and surface water flows); and
 - e) Any engineering or Site plans or maps, including any used for permitting.
- Provide copies of all aerial and ground photos of the Site, which may include original film negatives, positives, digital photos, and/or marked-up aerial photos in your possession. Include a narrative for each photo submitted, providing the date the photo was taken and description of the area depicted in the photo (e.g., directional and orientation references).
- 6) Provide a detailed description of all earthmoving, construction, excavation, and vegetation-clearing activities that occurred in wetlands, streams, ditches, ponds, and lakes on the Site. Describe all earthmoving, construction, excavation, and vegetation-

clearing activities, including, but not limited to, piping, decanting, spilling, trenching, culvert placement, road way construction, drag-lining, mechanized or manual clearing of vegetation, windrowing or stockpiling, grading, grubbing, soil excavation or removal, installation of dams or other water control features, and placing fill or dredged material. Include a timeline of the activities that occurred.

- 7) Provide a description of the type(s) of equipment and method(s) used to accomplish the activities referenced in Question 6, above.
- Provide copies of any document(s) that describe the length and area of dredged or fill material placement that you added to, excavated from, or rearranged in wetlands, streams, ditches, ponds, and lakes on the Site. If you have no documents recording the length and area of dredge and fill placement, please provide a narrative response with an estimate of these figures.
- 9) Provide the name, title, employer, business address, and business telephone number of each person or company, including yourself, who was involved in any of the activities described in your answers to Questions 1-9, above.
- 10) Provide copies of all documentation (including, but not limited to, field notes, maps, photographs, video, aquatic resource assessments, and wetland delineations) of the efforts you made to determine whether the Site or any portion of it contained wetlands or other waters of the United States (e.g., streams, ditches, ponds, or lakes). Identify by name, title, employer, and business address, all persons involved in this determination.
- 11) State whether Elgin Community College has ever applied for or received a permit, including nationwide, regional, general, individual or after-the-fact permits, issued under Section 404 of the CWA, 33 U.S.C. § 1344, or had other prior knowledge of the CWA Section 404 Regulatory program. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence specifically mentioning the USACE or the CWA Section 404 program.
- 12) State whether Elgin Community College has applied for or received a permit issued by the State of Illinois or its political subdivisions or agencies, including Kane County and the City of Elgin, related to work performed at the Site. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence related to processing any permit.
- 13) Provide any other information or documents you deem relevant to this matter.
- 14) You or a responsible agent must submit all requested information under an authorized signature with the following certification:

I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment





Unless otherwise specified, the period covered by these requests shall be from June 2009 to present.

- 1. Provide all land documents that reflect Elgin Community Colleges' (ECC) ownership interest in the Site or any portion thereof, including, but not limited to plats of survey, titles, deeds, easements, and property or real estate tax bills.
- 2. A cease and desist order (C & D) was issued to you on June 7, 2012 by the U.S. Army Corps of Engineers ("USACE")¹. The C & D states that ECC has discharged fill and/or dredged materials into a wetland, without obtaining a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 3344². Provide the following information with respect to the activities listed in the C & D at the Site:
 - a) Specific purpose(s) of or reason(s) for the activities;
 - b) Date the activities commenced;
 - c) Date the activities were completed;
 - d) Date any dredge or fill material was first deposited; and
 - e) Date any dredge or fill material was removed.
- 3. Provide all documents that authorized ECC to conduct the activities referenced in the C & D at the Site, including, but not limited to, correspondence, contracts, agreements, purchase orders, work orders, requests for quotes, quotes, memoranda, invoices, letter agreements, receipts, proposals, statements and any similar documents.
- 4. In addition to responses provided to No. 3, above, provide a copy of any contract between ECC, Wills Burke Kelsey Associates (WBK), Lamp, Inc., Schneider Excavation, and all other contractors, including subcontractors, for the development and construction of the Site. Your response shall include a dated and signed copy by the person authorized to execute the contracts for and on behalf of ECC and provide copies of any attachments/enclosure to those contracts.
- 5. Provide a copy of any "Notice-to-Proceed (NTP)" provided by ECC or ECC contractors authorizing construction to be initiated at the site. Your response shall include a dated and signed copy by the person authorized to execute these notices for or on behalf of ECC.
- 6. Beginning from the date when construction was initiated and completed, in response to No. 2, above, provide copies of any construction change orders submitted by contractors and subcontractors and approved/paid by ECC. Your response shall include a date and signature for each change order submitted and a date and signature for each change order approved by the person authorized to execute the change orders for and on behalf of ECC.

¹ See Attachment 2.

² See Attachment 1.

- 7. Provide copies of all documents and information you have which describe the Site's physical attributes and the Site's immediate surroundings, including, but not limited to:
 - a) Topographical (elevational) surveys, including any drawing(s) of vertical or horizontal elevations;
 - b) Soil borings or sample data;
 - c) Vegetation identifications, descriptions, or surveys;
 - d) Site hydrological surveys (e.g., data on ground water and surface water flows); and,
 - e) Any engineering or Site plans or maps, including any used for permitting.
- 8. Provide copies of all aerial and ground photos of the Site, which may include original film negatives, positives, digital photos, and/or marked-up aerial photos in your possession. Include a narrative for each photo submitted, providing the date the photo was taken and description of the area depicted in the photo (e.g., directional and orientation references).
- 9. Provide a detailed description of all earthmoving, construction, excavation, and vegetation-clearing activities that occurred in wetlands, streams, ditches, ponds, and lakes on the Site. Describe all earthmoving, construction, excavation, and vegetation-clearing activities, including, but not limited to, piping, decanting, spilling, trenching, culvert placement, road way construction, drag-lining, mechanized or manual clearing of vegetation, windrowing or stockpiling, grading, grubbing, soil excavation or removal, installation of dams or other water control features, and placing fill or dredged material. Include a timeline of the activities that occurred.
- 10. Provide a description of the type(s) of equipment and method(s) used to accomplish the activities referenced in Question 9, above.
- 11. Provide copies of any document(s) that describe the length and area of dredged or fill material placement that ECC added to, excavated from, or rearranged in wetlands, streams, ditches, ponds, and lakes on the Site. If you have no documents recording the length and area of dredge and fill placement, please provide a narrative response with an estimate of these figures.
- 12. Provide the name, title, employer, business address, and business telephone number of each person or company, including yourself, who was involved in any of the activities described in your answers to Questions 1-11, above.
- 13. Provide copies of all documentation (including, but not limited to, field notes, maps, photographs, video, aquatic resource assessments, and wetland delineations) of the efforts you made to determine whether the Site or any portion of it contained wetlands or other waters of the United States (e.g., streams, ditches, ponds, or lakes). Identify by name, title, employer, and business address, all persons involved in this determination.

- 14. State whether ECC has ever applied for or received a permit, including nationwide, regional, general, individual or after-the-fact permits, issued under Section 404 of the CWA, 33 U.S.C. § 1344, or had other prior knowledge of the CWA Section 404 Regulatory program. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence specifically mentioning the USACE or the CWA Section 404/402 program.
- 15. State whether Elgin Community College has applied for or received a permit issued by the State of Illinois or its political subdivisions or agencies, including the Illinois Environmental Protection Agency (IEPA), Kane County and the City of Elgin, related to work performed at the Site. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence related to processing any permit. Your response shall provide a dated and signed copy by the person authorized to submit these requests and provide copies of any attachments/enclosures accompanying the request/application.
- 16. Provide any correspondence between ECC and the City of Elgin regarding local requirements requiring that ECC prepare an update to its campus-wide stormwater management plan, as well as an operations and maintenance plan for the private stormwater management system and outfalls within the campus limits. Your response should include the reasons why the City has requested that these plans be prepared before any additional campus projects are permitted and the current status and schedule for completing these plans.
- 17. Identify the date(s) and provide copies of any recommendations placed before the ECC Board of Trustees for approval of funding, contracts, and change orders for the development and construction on the Site.
- 18. As ECC was instructed by the Corps on June 7, 2012 (enclosed), provide the following information³:
 - A. If your decision is to restore the affected area(s), you shall submit written acknowledgement of your decision, along with a restoration plan and schedule within 30 days of receipt of this order. Please be informed that any proposed restoration work shall not commence until this office has approved the restoration plan. The restoration plan and schedule must include:
 - i. Appropriate figures with landmarks and dimensions detailing the proposed restoration efforts;
 - ii. Activities to be undertaken in your restoration efforts. You must provide written information in narrative format on how the fill would be removed and erosion and sediment control measures to be installed prior to fill removal;

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³ To date, the ECC has not complied with the Corps' request.

- iii. A schedule of implementation, with start and end dates for all restoration activities;
- iv. The area shall be replanted with native vegetation only. You shall provide Information on the species/quantities to be replanted and;
 - v. Information on the permanent disposal location of the removed fill material.
 - B. If your decision is to leave the dredged and/or fill material in place, the following information shall be submitted to this office, in writing, so that a determination of whether to accept or deny your After-the-Fact permit application can be completed:
 - i. Purpose of the project along with a clear description of work;
 - ii. Construction drawings (full-sized) showing all aspects of the proposed activity, including existing and proposed contours, utilities, the location of waters of the United States to be impacted and not impacted, and the Ordinary High Water Mark (OHWM) and/or the Normal Water Level (NWL) of all waterways, including wetlands. In addition, the drawings shall include detail plan and profile views of all regulated structures;
 - iii. The direct and indirect adverse environmental effects that the project would cause:
 - iv. A delineation of affected special aquatic sites, including wetlands that existed on the property prior to construction activities, with an overlay of the filled area;
 - v. A statement indicating the present owner of this property;
 - vi. A statement indicating the type of fill and its source, the date(s) of filling, and the identity of the individual(s) performing the work;
 - vii. A list of all permits or authorizations received for this activity, including name of agency, date of permit and description of permitted activity;
 - viii. A statement indicating why you failed to obtain an Army Corps of Engineers permit prior to the discharge, and;
 - ix. Your signature on the enclosed Tolling Agreement.
- 19. Provide any other information or documents you deem relevant to this matter.

- 20. You or a responsible agent must submit all requested information under an authorized signature with the following certification:
- "I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

DEPARTMENT OF THE ARMY



CHICAGO DISTRICT, CORPS OF ENGINEERS
111 NORTH CANAL STREET
CHICAGO, ILLINOIS 60606-7206

June 7, 2012

Technical Services Division Regulatory Branch LRC-2010-00553 CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SUBJECT: Knowing, Willing and Flagrant Unauthorized Filling of Advanced Identification (ADID #1403) Wetland for the West Parking Lot Addition for the Elgin Community College, in Elgin, Kane County, Illinois

Paul Dawson Elgin Community College 1700 Spartan Drive Elgin, Illinois 60123

Dear Mr. Dawson:

On November 2, 2010, and again on May 2, 2012, a representative of the U.S. Army Corps of Engineers (Corps) Regulatory Branch conducted a site inspection at the above-referenced location and has determined that a discharge of fill and/or dredged material into an Advanced Identification (ADID #1403) wetland has occurred on the property located at the Elgin Community College property in Elgin, Kane County, IL (Section 21, Township 41 N, Range 8 E).

The activity is a violation of Section 301(a) of the Clean Water Act (33 U.S. C. 1311), since a review of our records indicates that a Department of the Army permit was not obtained pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Furthermore, a permit was issued to the Elgin Community College for the original parking lot expansion on April 14, 1992; and a permit was issued to the Elgin Community College for the Spartan Drive project on August 2, 2009; therefore this violation is considered knowing, willing and flagrant. The U.S. Army Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States. These waters (or aquatic resource) include, but are not limited to, lakes, rivers, streams and wetlands, such as swamps, marshes, bogs, etc. Violations of the Clean Water Act are punishable by potential penalties of civil fines of up to \$32,500 per day of violation, criminal fines of up to \$50,000 per day of violation and/or imprisonment; and you may also be required to restore the site.

You are hereby ordered to cease and desist work on the West Parking Lot Addition project until this violation is resolved. You may resolve your violation by either:

- a) voluntarily removing the dredged and/or fill material from the Advanced Identification (ADID #1403) wetland within 60 days of receipt of this order or;
- b) Submitting an After-the-Fact permit application (enclosed) within 30 days of receipt of this order to retain the dredged and/or fill material in the Advanced Identification (ADID #1403) wetland.

Within 10 days of your receipt of this order, you will submit a written statement of your intent to comply with this order. This statement will include the method you propose to resolve this violation.

If your decision is to restore the affected area(s), you shall submit written acknowledgement of your decision, along with a restoration plan and schedule within 30 days of receipt of this order. Please be informed that any proposed restoration work shall not commence until this office has approved the restoration plan. The restoration plan and schedule must include:

- 1. Appropriate figures with landmarks and dimensions detailing the proposed restoration efforts;
- 2. Activities to be undertaken in your restoration efforts. You must provide written information in narrative format on how the fill would be removed and erosion and sediment control measures to be installed prior to fill removal;
- 3. A schedule of implementation, with start and end dates for all restoration activities;
- 4. The area shall be replanted with native vegetation only. You shall provide Information on the species/quantities to be replanted and;
 - 5. Information on the permanent disposal location of the removed fill material.

If your decision is to leave the dredged and/or fill material in place, the following information shall be submitted to this office, in writing, so that a determination of whether to accept or deny your After-the-Fact permit application can be completed:

- 1. Purpose of the project along with a clear description of work;
- 2. Construction drawings (full-sized) showing all aspects of the proposed activity, including existing and proposed contours, utilities, the location of waters of the United States to be impacted and not impacted, and the Ordinary High Water Mark (OHWM) and/or the Normal Water Level (NWL) of all waterways, including wetlands. In addition, the drawings shall include detail plan and profile views of all regulated structures;
 - 3. The direct and indirect adverse environmental effects that the project would cause;

- 4. A delineation of affected special aquatic sites, including wetlands that existed on the property prior to construction activities, with an overlay of the filled area;
 - 5. A statement indicating the present owner of this property;
- 6. A statement indicating the type of fill and its source, the date(s) of filling, and the identity of the individual(s) performing the work;
- 7. A list of all permits or authorizations received for this activity, including name of agency, date of permit and description of permitted activity;
- 8. A statement indicating why you failed to obtain an Army Corps of Engineers permit prior to the discharge, and;
 - 9. Your signature on the enclosed Tolling Agreement.

By copy of this letter, this office is soliciting the views of appropriate federal, state and local agencies, which may also have jurisdiction, regarding this unauthorized activity. Based upon your response to this order and the comments received from the agencies, it will be determined whether to accept an After-the-Fact permit application or require you to restore the site to its original condition. If your response is not received by this office within the designated time periods, a decision will be made by this office without benefit of your comments.

You should be aware that compliance with this order will not foreclose my options to initiate legal action, require corrective measures, or refer this case to the U.S. Environmental Protection Agency. Failure to comply with this order may result in a recommendation to the United States Attorney's Office to institute appropriate legal proceedings to enforce this order. Your complete cooperation and the expeditious resolution of your violation may avert these actions.

This matter is being coordinated with the U.S. Environmental Protection Agency which has independent enforcement authority under the Clean Water Act. Failure to comply with this order will result in appropriate enforcement action.

If you have any questions, please contact Mr. Mike Machalek of my staff by telephone at 312-846-5534, or email at Mike.J.Machalek@usace.army.mil.

Sincerely,

Keith L. Wozniak Chief, West Section Regulatory Branch

Enclosures

Copy Furnished w/out Enclosures:

U.S. Attorney's Office (Linda Wawzenski)

U.S. Environmental Protection Agency (Wendy Melgin)

U.S. Fish and Wildlife Service (Shawn Cirton)

Illinois Department of Natural Resources/OWR (Gary Jereb)

Illinois Environmental Protection Agency (Thad Faught)

Illinois Department of Natural Resources (Robert Schanzle)

Kane County Division of Environmental Management (Ken Anderson)

City of Elgin (Sean Stegall)

WBK (Pat Kelsey)

MACHALEK

CELRC-TS-RW

TOLLING AGREEMENT

WHEREAS, the United States of America, on behalf of the United States Army Corps of Engineers (Corps) may file a complaint against Elgin Community College ("potential defendant(s)") for , inter alia, alleged violations of Sections 301(a), 309, & 404 of the Clean Water Act ("CWA"), 33 U.S.C. Sections 1311(a), 1319, & 1344 at a site commonly known as Elgin Community College, Elgin, Kane County, Illinois. (Department of the Army number LRC-2010-00553)

WHEREAS, the purpose of any such complaint would be to obtain appropriate injunctive relief and to impose appropriate civil or criminal penalties for potential defendant's alleged violations of the statute(s) cited above;

WHEREAS, the Corps accepted an after-the-fact (ATF) permit application from the potential defendant(s) in an attempt to settle the above claims;

WHEREAS, both parties believe that their interests will best be served by continuing the ATF permit process without the disruption that might be occasioned should the United States file a complaint in the immediate future;

AND WHEREAS both parties acknowledge the requirement found at 33 C.F.R. 331.11(c) for an applicant for an ATF permit to provide a signed tolling agreement;

THEREFORE, the United States and potential defendant(s) stipulate and agree as follows:

- 1. The United States and potential defendant(s) agree that the time between the acceptance by the Corps of the ATF permit application and the final Corps decision (as defined at 33 CFR 331.10) will not be included in calculating any statute of limitations that might be applicable to the alleged statutory violation(s) described above. Potential defendants agree not to assert, plead, or raise in any fashion on behalf of any party, whether by answer, motion, or otherwise, any defense or avoidance based on the running of any statute of limitations that may apply during that period or any defense or avoidance based on laches or other principle concerning the timeliness of commencing a civil action, based on the failure of the United States to file its complaint during that period.
- 2. Potential defendants further agree not to transfer the property in question during the pendency of this tolling agreement nor during the pendency of any civil action brought as described above, without first notifying the United States and giving the United States a reasonable opportunity to oppose such transfer.
- 3. Nothing in this tolling agreement shall restrict or otherwise prevent the United States from filing a complaint regarding any alleged statutory violation(s) not described above, at any time.

4. This tolling agreement does not constitute any admission of liability on the part of
potential defendants; nor does it constitute any admission or acknowledgment on the part of the
United States that any statute of limitations has run or that any statute of limitations is applicable
to the statutory claims described above.

5. This tolling agreement contains the entire agreement between the parties, and no				
statement, promise or inducement made by any party to this agreement, or any agent of such				
parties, that is not set forth in this agreement shall be valid or binding. This tolling agreement				
may not be enlarged, modified or altered except in writing signed by the parties.	This tolling			
agreement may be executed in counterparts.				

agreement may be executed in counterparts.	
FOR the United States of America:	
Kimberly Sabo	Date
District Counsel	
Chicago District, U.S. Army Corps of Engineers	
FOR	
Paul Dawson Elgin Community College	Date